

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

LIFEQUOTES OF AMERICA, INC., and
JERRY COOPER, INC., d/b/a COLOR
ONE PHOTOLAB,

Defendants.

NO. CV-06-0228-EFS

**ORDER GRANTING AND DENYING IN
PART GTH'S MOTION FOR PROTECTIVE
ORDER AND RULING ON DISCOVER-
ABILITY OF DOCUMENTS SUBMITTED
FOR *IN CAMERA* REVIEW**

A hearing occurred in the above-captioned matter on December 9, 2009. Joanne Blackburn appeared on behalf of non-party Gordon Thomas Honeywell LLP (GTH). Syed Ahmad and Kathleen Nelson appeared on behalf of Plaintiff Utica Mutual Insurance Co. (Utica). Defendants Lifequotes of America, Inc. and Jerry Cooper, Inc. were represented by Mark Griffin and Margaret Wetherald. Before the Court was GTH's Motion for Protective Order (Ct. Rec. [198](#)). Also, before the Court, were claimed work-product and attorney-client privileged documents that had been submitted by Utica for a Court-ordered *in camera* review to determine whether such documents must be disclosed to Defendants. After reviewing the submitted material and relevant authority and considering counsels' oral arguments, the Court is fully informed. For the reasons given below, the Court grants and denies in part GTH's motion and requires

1 disclosure of the below-identified *in camera* documents.

2 **A. Background**

3 On March 16, 2009, the Court granted Defendants' motion to compel
4 and ordered Utica to disclose 1) Category 1 documents: documents between
5 defense counsel, LifeQuotes, and Utica; 2) Category 2 documents: Utica's
6 internal communications, including communications between claims
7 professionals; and 3) Category 5 documents: communications involving
8 bankruptcy counsel. (Ct. Rec. 179.) The Court also required Utica to
9 submit unredacted Category 3 documents (documents maintained in the
10 defense claims file pertaining to communications between Utica and
11 Seattle coverage counsel) and Category 4 documents (communications
12 between Utica and national counsel). *Id.* GTH was not involved in the
13 briefing or oral argument presented in connection with this motion.

14 In June 2009, while the Court was considering the Category 3 and 4
15 documents in camera, Defendants issued subpoenas duces tecum to Ms.
16 Blackburn, GTH, and the law firm Ms. Blackburn previously worked at,
17 which sought:

18 All documents and electronically stored information related in
19 anyway to the Underlying, Omerza and Dubsky Actions including,
20 without limitation, all pleadings, correspondence, e-mails,
21 other communications, attorney notes, memoranda, policies,
22 research bills for attorneys' fees and costs, and all
23 documents provided to you by Lifequotes, Mr. Paul Piubeni,
24 and/or PJP Insurance.

25 GTH produced responsive documents and electronically-stored information
26 (ESI) but objected to producing documents and ESI concerning Paul
27 Piubeni's communications relating to his personal liability exposure and
28 the impact, if any, if he filed for bankruptcy that he had with a) Ms.

1 Blackburn, defense counsel retained by Utica to represent LifeQuotes¹ in
2 the underlying state-court action, and b) Utica-retained bankruptcy
3 attorney Charles Robinson. Specifically, GTH contends that the
4 following documents are protected by either the attorney-client
5 privilege or work-product doctrine: a) report letters and e-mails from
6 defense counsel to Utica and Mr. Piubeni relating to Mr. Piubeni's
7 personal liability exposure; b) communications between defense counsel
8 and Mr. Piubeni relating to Mr. Piubeni's personal liability exposure,
9 and c) Ms. Blackburn's billing statements for defending LifeQuotes in
10 the underlying state-court action submitted to Utica.

11 **B. Legal Authority and Analysis**

12 1. GTH's motion

13 First, the Court highlights that its discovery rulings only apply
14 in this federal lawsuit. Second, pursuant to Federal Rule of Civil
15 Procedure 26,² Defendants may obtain any non-privileged information that
16 is relevant to their breach of insurance contract claim and related bad-
17 faith claim. Previously, the Court ruled that information relating to

18
19 ¹ Mr. Piubeni was the sole shareholder of LifeQuotes.

20 ² Rule 26 states:

21 Parties may obtain discovery regarding any nonprivileged
22 matter that is relevant to any party's claim or
23 defense—including the existence, description, nature, custody,
24 condition, and location of any documents or other tangible
25 things and the identity and location of persons who know of
26 any discoverable matter. For good cause, the court may order
discovery of any matter relevant to the subject matter
involved in the action. Relevant information need not be
admissible at the trial if the discovery appears reasonably
calculated to lead to the discovery of admissible evidence.
All discovery is subject to the limitations imposed by Rule
26(b)(2)(C).

27 Fed. R. Civ. P. 26(b)(1).

1 what Utica personnel or counsel knew about the Fax.com invoices and the
2 liability that Lifequotes and Mr. Piubeni faced and when such knowledge
3 was obtained are relevant to Defendants' bad faith allegations. After
4 reconsidering these issues in light of GTH's arguments, the Court abides
5 by this relevancy finding. Yet, the Court concludes that GTH satisfied
6 its burden of proving that communications relating to Mr. Piubeni's
7 personal liability exposure that were between a) Mr. Piubeni and Ms.
8 Blackburn, b) Ms. Blackburn and Mr. Robinson, or c) Mr. Piubeni and Mr.
9 Robinson are protected by the attorney-client privilege. RCW 5.60.060.
10 This privilege, however, is waived for any such communication or
11 documentation that was shared with Utica. *See generally In re Bevill,*
12 *Bresler & Schultman Asset Mgmt. Corp.*, 805 F.2d 120 (3d Cir. 1986)
13 (allowing discovery of communications during meetings of corporate
14 officers and counsel because both personal and corporate legal advice
15 were sought and no joint defense pursued). Because there is no evidence
16 that Mr. Piubeni and Utica agreed to pursue a joint defense strategy or
17 shared a common interest relating to Mr. Piubeni's personal liability,
18 any disclosure to Utica of attorney-client privileged communications
19 concerning Mr. Piubeni's personal liability waived the privilege. *See*
20 *id.; Baden Sports, Inc. v. Kabushiki Kaisha Molten*, 2007 WL 1185680, at
21 *1-2 (W.D. Wash. 2007).

22 Nonetheless, the Court concludes GTH need not disclose unredacted
23 copies of its billing statements to Utica; the redacted billing
24 statements filed on December 16, 2009, are sufficient. (Ct. Rec. 222.)

25 For the above reasons, GTH's motion for a protective order is
26 granted and denied in part.

1 2. In camera review

2 After reviewing the submitted Category 3 and 4 documents in camera,
3 the Court orders Utica to disclose:

- 4 • Bates Nos. UCLF 001442-001456. The coverage opinion letter's
5 work-product protection is waived by its inclusion in the
6 defense claims file.
- 7 • The May 1, 2006 entry on Bates No. ULCF 001832.
- 8 • Bates Nos. U00005-U00006, U10000-U10004, U10006, U10007-
9 U10009, U10010-U10011, and U10012-U10013 because the attorney-
10 client privilege was implicitly waived by Utica's argument
11 that it intervened in good faith in the settlement
12 proceedings.
- 13 • Bates Nos. UCLF 001659-001664 *but* only the March 8, 2007 to
14 March 12, 2007 entries and the March 26, 2007 to March 30,
15 2007 entries because the attorney-client privilege was
16 implicitly waived by Utica's argument that it intervened in
17 good faith in the settlement proceedings. In addition, only
18 the description need be disclosed; the time and fee need not
19 be disclosed.

20 The claimed privileges and protections apply to the other documents
21 submitted in camera and therefore the other documents need not be
22 disclosed.

23 **C. Conclusion**

24 Accordingly, **IT IS HEREBY ORDERED:**

25 1. GTH's Motion for Protective Order (**Ct. Rec. [198](#)**) is **GRANTED**
26 **and DENIED IN PART.** GTH shall produce the following documents in
27

1 response to the subpoena duces tecum **no later than January 6, 2010:**

2 All documents and electronically stored information related in
3 anyway to the Underlying, Omerza and Dubsky Actions including,
4 without limitation, all pleadings, correspondence, e-mails,
5 other communications, attorney notes, memoranda, policies,
6 research bills for attorneys' fees and costs, and all
documents provided to you by Lifequotes, Mr. Paul Piubeni,
and/or PJP Insurance *unless* it a) relates to Mr. Piubeni or
PJP's liability exposure and b) was not disclosed to Utica.

7 2. Utica shall disclose the above-listed Bates-stamped documents
8 no later than **January 6, 2010.**

9 **IT IS SO ORDERED.** The District Court Executive is directed to
10 enter this Order and provide copies to counsel.

11 **DATED** this 22nd day of December 2009.

12
13 s/Edward F. Shea
EDWARD F. SHEA
14 UNITED STATES DISTRICT JUDGE

15
16 Q:\Civil\2006\0228.prot.order.incamera.wpd
17
18
19
20
21
22
23
24
25
26
27